

**Statutes and Regulations
for Filing Protests
on Applications
to Appropriate Water**



JANUARY 2002

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA

Gray Davis, Governor

STATE WATER RESOURCES CONTROL BOARD

Arthur G. Baggett, Jr., Chairman

Peter S. Silva, Vice Chair

Richard Katz, Member

Gary M. Carlton, Member

•
Celeste Cantú, Executive Director

For additional copies or further information, contact the
State Water Resources Control Board, Office of Legislative and Public Affairs
at (916) 341-5254 or our website at www.swrcb.ca.gov

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CALIFORNIA CODE OF REGULATIONS**TITLE 23. WATER****DIVISION 3. STATE WATER RESOURCES CONTROL BOARD
AND REGIONAL WATER QUALITY CONTROL BOARDS****Article 9. Protest and Answers****§745. Protest Requirements.**

Protests shall be submitted in writing with a duplicate copy to the applicant and shall substantially comply with the following requirements.

(a) Each protest shall include the name and address of the protestant and show that the protestant has read either the application or the related notice.

(b) If the protest is based on interference with a prior right, there shall be an allegation of specific injury to protestant which will result from the proposed appropriation. The protest shall state the basis of protestant's claim of right to use water and when the use began, the use which has been made in recent years, and present use. The location of protestant's point of diversion shall be described with sufficient accuracy so that the position thereof relative to the point of diversion proposed by applicant may be determined.

(c) The allegation that the proposed appropriation would not be within the board's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law shall be accompanied by a statement of facts supporting the allegation.

(d) Protestant should call attention to any amendment of the application or other grounds for settlement which, if agreed upon, would result in withdrawal of the protest.

(e) The protest shall indicate the manner in which service upon the applicant of a duplicate copy of the protest has been made.

§746. Claim of Right Without Compliance with Statutory Procedure.

A protest based upon a claim of interference with an alleged appropriative or prescriptive right which has not been adjudicated and which is based solely upon use of water commenced since December 19, 1914, without compliance with statutory procedure, will not be accepted.

§747. Time for Filing.

Protests shall be filed within the time stated in the notice of the application or such further time as may, for good cause, be allowed by the board.

§748. Service of Supplements and Correspondence.

A copy of any supplement to the protest or letter concerning the protest shall be served upon the opposing party.

§749. Rejection of Protest.

A protest will not be accepted if it fails substantially to comply with the requirements of Section 745, fails to state a valid ground of protest, or is based upon issues which are not within the jurisdiction of the board; provided, however, that the board will allow reasonable opportunity to correct a protest or to reach a settlement with the applicant. Since an upstream water user can take water before it reaches a downstream applicant, a protest based upon interference with a prior right of such upstream user normally will not be accepted.

§750. Abandonment of Protest.

Failure of a protestant to respond to correspondence from the board concerning the protest may be interpreted as an abandonment of interest therein. Should such failure occur, the board may, by certified mail, direct the protestant to respond. Failure to respond to such direction within 30 days from the date upon which the letter is received shall be deemed an abandonment of the protest and the protest shall be dismissed without further notice.

§751. Answers to Protests.

The applicant should file an answer to each protest. To facilitate resolution of protests, answers shall be filed not later than 15 days following notification of acceptance of the protest, unless additional time is allowed by the board. A copy of the answer shall be served on the protestant. A statement that protestant has been served shall be filed with the answer together with an indication of the manner of service.

§752. Content of Answers.

If the applicant files an answer to a protest, the answer shall be responsive to the allegations contained in the protest. It should indicate the line of defense which will be presented and any possibilities for settlement of the protest which the applicant may suggest.

§753. Extension of Time for Negotiation.

A request for extension of time within which to file a protest or answer thereto in order to enable negotiation of conflicting claims shall be accompanied by a showing of diligent good faith efforts to reach an agreement between the parties with reasonable prospects of success.

ARTICLE 10. INVESTIGATIONS**§755. Board May Conduct — Cooperation by Parties.**

The board may, in its discretion, conduct a field investigation of the water and other resources affected by an application. The parties may be requested

to confer and cooperate with the engineer and other representatives of the board designated to carry out such investigations.

§756. Benefits and Detriments; Alternative Projects.

(a) Analysis. The board shall at the request of any party or on its own motion, to the extent practicable, identify and evaluate the benefits and detriments, including but not limited to economic and environmental factors, of the present and prospective beneficial uses of the waters involved and alternative means of satisfying or protecting such uses, and make findings with respect thereto. For example, if releases of stored water may be required in connection with a project, any party may request that the board analyze the potential benefits and detriments, if any, of such releases. These benefits and detriments may be both economic and environmental. Some examples are possible enhancement or mitigation of flows and enhancement or mitigation of water quality downstream which may, in turn, result in economic benefit or economic mitigation to downstream water users and cause a reduction in economic benefit to direct users of project water by reducing the amount of water available for their use.

(b) Source of Information. The applicant may be required, and other parties may be requested, to provide such information as is determined necessary by the board to prepare the evaluation provided for by this section. The board will use the environmental documents prepared for the project and evidence received in any proceeding relative to the application as sources of information to the fullest extent possible.

(c) Time for Filing Request. Any request by a party that the board make the evaluation called for by this section must be received prior to the date of notice of hearing or notice that the board will conduct proceedings in lieu of hearing.

**ARTICLE 12. RECONSIDERATION AND AMENDMENTS OF
BOARD WATER RIGHT DECISIONS AND ORDERS**

§768. Reconsideration of Board Decisions and Orders.

No later than thirty (30) days after adoption by the board of a decision or order, any person interested in any application, permit or license affected by the decision or order may petition the board for reconsideration of the matter upon any of the following causes:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

§769. Petition for Reconsideration.

(a) Any petition for reconsideration of a decision or order shall be submitted in writing and shall contain the following:

- (1) Name and address of the petitioner.
- (2) The specific board action of which petitioner requests reconsideration.
- (3) The date on which the order or decision was made by the board.
- (4) The reason the action was inappropriate or improper.
- (5) The specific action which petitioner requests.

(6) A statement that copies of the petition and any accompanying materials have been sent to all interested parties.

(b) If reconsideration is requested based in whole or in part on Section 768, the petition shall include an affidavit or declaration under penalty of perjury stating that additional evidence is available that was not presented to the board and the reason it was not presented. A general statement of the nature of the evidence and of the facts to be proved shall also be included.

(c) The petition shall be accompanied by a statement of points and authorities in support of legal issues raised in the petition.

§770. Board Action.

(a) The board may:

(1) Refuse to reconsider the decision or order if the petition fails to raise substantial issues related to the causes for reconsideration set out in Section 768; or

(2) After review of the record, including any hearing transcript and any material submitted in support of the petition:

(A) Deny the petition upon a finding that the decision or order was appropriate and proper; or

(B) Set aside or modify the decision or order; or

(C) Take other appropriate action.

Before taking final action, the board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both.

§771. Procedure Relating to Hearings.

The provisions of Article 11 of the subchapter insofar as they are applicable shall govern hearings under this article.

STATE WATER RESOURCES CONTROL BOARD**DIVISION 2.
WATER****PART 1.
GENERAL PROVISIONS****CHAPTER 4.
RECONSIDERATION, AMENDMENT AND JUDICIAL REVIEW
OF WATER RIGHT DECISIONS AND ORDERS****Article 1.
General Provisions**

1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine.

(Added by Stats.1996, Ch. 659.)

1121. The board shall serve a copy of a decision or order on the parties by personal delivery or registered mail.

(Added by Stats.1996, Ch. 659.)

**Article 2.
Reconsideration and Amendment of Decisions and Orders**

1122. The board may order a reconsideration of all or part of a decision or order on the board's own motion or on the filing of a petition of any interested person or entity. The petition shall be filed not later than 30 days from the date on which the board adopts a decision or order. The authority of the board to order a reconsideration on its own motion shall expire 30 days after it has adopted a decision or order. The board shall order or deny reconsideration on a petition therefor not later than 90 days from the date on which the board adopts the decision or order.

(Added by Stats.1996, Ch. 659; Amended by Stats. 2001, Ch. 315.)

1123. The decision or order may be reconsidered by the board on all the pertinent parts of the record and such argument as may be permitted, or a further hearing may be held, upon notice to all interested persons, for the purpose of receiving such additional evidence as the board may, for cause, allow. The decision or order on reconsideration shall have the same force and effect as an original order or decision.

(Added by Stats.1996, Ch. 659.)

1124. The board at any time may amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon.

(Added by Stats.1996, Ch. 659.)

Article 3.

Review by Court of Decisions and Orders

1126. (a) It is the intent of the Legislature that all issues relating to state water law decided by the board be reviewed in state courts, if a party seeks judicial review. It is further the intent of the Legislature that the courts assert jurisdiction and exercise discretion to fashion appropriate remedies pursuant to Section 389 of the Code of Civil Procedure to facilitate the resolution of state water rights issues in state courts.

(b) Any party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for review of the decision or order. Except in cases where the decision or order is issued under authority delegated to an officer or employee of the board, reconsideration before the board is not an administrative remedy that is required to be exhausted before filing a petition for writ of mandate. The time for filing the petition for writ of mandate and the time for filing an action or proceeding in which the board is a respondent under Section 21167 of the Public Resources Code shall be extended for any person who seeks reconsideration by the board pursuant to this article. The amendment of this subdivision made during the 2001 portion of the 2001-02 Regular Session does not constitute a change in, but is declaratory of, existing law.

(c) Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings under this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgement on the evidence in any case involving the judicial review of a cease and desist order issued pursuant to Article 2 (commencing with Section 1831) of Chapter 12 of Part 2 of Division 2, and in any other case in which the court is authorized by law to exercise its independent judgement on the evidence.

(d) If no aggrieved party petitions for a writ of mandate within the time provided by this section, the decision or order of the board is not subject to review by any court.

(e) In any court case reviewing a decision or order by the state board relating to a permit or license to appropriate water held by the state through the department or any other state agency, or to a permit or license to appropriate water held by the United States through the Bureau of Reclamation or any other federal agency, the election by the United States, or any agency thereof, not to be a party shall not, in and of itself, be the basis for dismissal pursuant to Section 389 of the Code of Civil Procedure or any other provision of law.

(Added by Stats.1996, Ch. 659; Amended by 1998, Ch. 345; Amended by Stats. 2001, Ch. 315.)

PART 2.
APPROPRIATION OF WATER

CHAPTER 4.
PROTEST OF APPLICATION

1330. Any person interested may, within the time allowed in the notice of application or within such further time as may, for good cause shown, be allowed by the board, file with it a written protest against the approval of an application.

1331. The protest shall meet all of the following requirements:

- (a) State the name and address of the protestant.
- (b) Be signed by the protestant, or the protestant's agent or attorney.
- (c) Clearly and specifically set forth the protestant's objections to the approval of the application, and state the bases for these objections.
- (d) Contain other appropriate information and be in the form provided in the rules and regulations of the board.
- (e) Be served on the applicant by the protestant by mailing a duplicate copy of the protest to the applicant or through service undertaken in another manner determined to be adequate by the board.

(Amended by Stats.1997, Ch. 323.)

1332. The board may request from the protestant additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under Section 1331. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

(Amended by Stats.1997, Ch. 323.)

1333. The protestant and the applicant shall make a good faith effort to resolve the protest within 180 days from the date on which the period provided under Section 1330 expires. For good cause, the board may allow additional time for the protestant and the applicant to attempt to resolve the protest.

(Amended by Stats.1997, Ch. 323.)

1334. The board may request from the protestant or the applicant additional information that the board determines is reasonably necessary to attempt to resolve the protest. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

(Amended by Stats.1997, Ch. 323.)

1335. (a) The board may cancel a protest or application for failure to provide information requested by the board under this article within the period provided.

(b) Except as provided in subdivisions (c) and (d), a protest shall not be canceled for failure to submit information not in the possession or under the control of the protestant if the protest is in compliance with Section 1331 and the applicant is or could be required to submit the information under Section 1260 or 1275.

(c) If a protest is based on interference with a prior right, the board may cancel the protest if the protestant fails to submit any of the following information requested by the board:

(1) Information that the protestant is required to submit to the board to comply with Part 5.1 (commencing with Section 5100) during any period after the protest is filed.

(2) Information that is reasonably necessary to determine if the protestant has a valid water right.

(3) Information concerning the protestant's historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed appropriation will result in injury to the protestant's exercise of its water right.

(d) If the protest is based on an allegation that the proposed appropriation would not be in the public interest, would adversely affect public trust uses, or would have adverse environmental impact, the board may cancel the protest for failure to submit information requested by the board if the board determines both of the following:

(1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation.

(Amended by Stats. 1997, Ch. 323.)

CHAPTER 5.

PROCEEDINGS ON APPLICATION

Article 1.

Notice of Hearing

1340. Notice of hearing on a protested application shall be given by mailing notice not less than 20 days before the date of hearing to both the applicant and protestant by registered mail.

1341. The notice of hearing on a protested application shall state the names of the applicant and protestant, the time and place fixed for the hearing, and such other appropriate information as may be deemed advisable by the board.

1342. If a hearing is held on an unprotested application, notice of hearing shall be given by mailing notice not less than 20 days before the date of hearing.

Article 1.5.

Minor Protested Applications Procedure

1345. The Division of Water Rights shall conduct a field investigation of all minor protested applications. The board shall notify the parties of the field inves-

tigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.

(Amended by Stats.1997, Ch. 323.)

1346. The Division of Water Rights may request the parties to submit information in support of their positions. The Division of Water Rights may request information before, during, or after the field investigation. After the field investigation, the Division of Water Rights may conduct additional proceedings in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1997, Ch. 323.)

1347. Based upon the field investigation and any other information obtained under this article, the Division of Water Rights shall issue a decision unless the board in its discretion determines that additional proceedings should be conducted under Section 183. A decision of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.

(Added by Stats.1997, Ch. 323.)

1348. For purposes of this article, a minor application shall mean any application which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

Article 2.

Action on Application

1350. The board may grant, or refuse to grant a permit and may reject any application, after hearing.

1351. No hearing is necessary in order to issue a permit upon an unopposed application, or if undisputed facts support the issuance of the permit and there is no disputed issue of material fact, unless the board elects to hold a hearing. No hearing is necessary to reject an application after notice, if the application is defective, the applicant fails to provide information requested by the board, or undisputed facts support the denial of the application and there is no disputed issue of material fact, unless the board elects to hold a hearing.

(Amended by Stats.1997, Ch. 323.)

1352. Upon failure of any party in interest to appear at a hearing or show good cause within five days thereafter for his failure, final action may be taken without further hearing.

1353. In the conduct of hearings technical rules of evidence need not be applied.

State Water Resources Control Board

P.O. Box 100, Sacramento, CA 95812-0100 • www.swrcb.ca.gov

Office of Legislative and Public Affairs:
Office of Legislative Information: (916) 341-5251
Office of Public Affairs Information: (916) 341-5254

Clean Water Programs Information: (916) 341-5700
Water Quality Information: (916) 341-5455
Water Rights Information: (916) 341-5300

California Regional Water Quality Control Boards

North Coast Region (1)
5550 Skyline Blvd., Ste. A
Santa Rosa, CA 95403
(707) 576-2220

San Francisco Bay Region (2)
1515 Clay Street, Ste. 1400
Oakland, CA 94612
(510) 622-2300

Central Coast Region (3)
81 Higuera Street, Ste. 200
San Luis Obispo, CA 93401-5427
(805) 549-3147

Los Angeles Region (4)
320 W. 4th Street, Ste. 200
Los Angeles, CA 90013
(213) 576-6600

Central Valley Region (5)
3443 Boulder Road, Suite A
Sacramento, CA 95827-3098
(916) 255-3000

Fresno Branch Office
1665 E. Street
Fresno, CA 93721
(559) 445-5116

Redding Branch Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002
(530) 224-4845

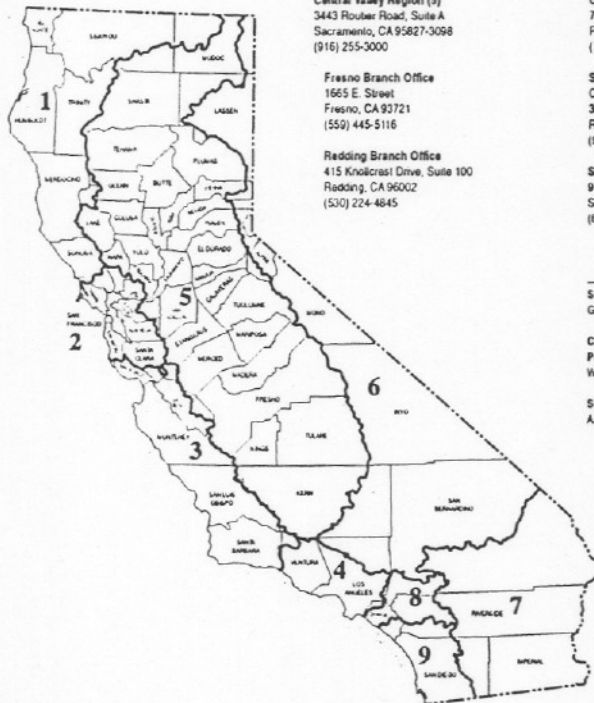
Lahontan Region (6)
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150
(530) 542-5400

Victorville Branch Office
15426 Civic Drive, Ste. 100
Victorville, CA 92392-2363
(760) 241-6583

Colorado River Basin Region (7)
73-720 Fred Waring Dr., Ste. 100
Palm Desert, CA 92260
(760) 346-7491

Santa Ana Region (8)
California Tower
3737 Main Street, Ste. 500
Riverside, CA 92501-3330
(909) 782-4130

San Diego Region (9)
9174 Skypark Ct., Ste. 100
San Diego, CA 92123
(619) 467-2952



State of California
Gray Davis, Governor

California Environmental
Protection Agency
Winston H. Hickox, Secretary

State Water Resources Control Board
Arthur G. Baggett, Jr., Chair